

IN THE UNITED STATES DISTRICT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

MATTHEW TOTILO, individually and on	:	
behalf of himself and all others similarly	:	
situated,	:	Case No. 07-cv-10991-LAK
Plaintiff	:	
v.	:	
STEVEN F. HERBERT and	:	
JAMES P. GROSS,	:	
Defendants.	:	

**NOTICE OF  
DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION,  
FOR IMPROPER VENUE, AND FOR FAILURE TO STATE A CLAIM**

PLEASE TAKE NOTICE that upon the Memorandum of Law in Support of Defendants' Motion to Dismiss (Lack of Personal Jurisdiction and Improper Venue), the Memorandum of Law in Support of Defendants' Motion to Dismiss (Failure to State a Claim Upon Which Relief Can Be Granted),<sup>1</sup> and Declaration of Lisa Albert submitted herewith, with exhibits, and upon the Complaint herein, attorneys for the Defendants Steven F. Herbert and James P. Gross ("Defendants") will move this Court before the Honorable Lewis A. Kaplan, United States District Judge, at the United States Courthouse 500 Pearl Street, New York, NY 10007, heard on a date to be determined, for an order, under Fed. R. Civ. P. 12(b)(2), (b)(3), and (b)(6) to dismiss Plaintiff's Complaint for lack of personal jurisdiction, for improper venue, and for failure to state a claim, and for such further relief as the Court deems just and proper.

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<sup>1</sup> Defendants address the grounds for dismissal under Fed. R. Civ. P. 12(b)(2) and (b)(3) in the Memorandum of Law in Support of Defendants' Motion to Dismiss (Lack of Personal Jurisdiction and Improper Venue) and address the grounds for dismissal under Fed. R. Civ. P. 12(b)(6) in the Memorandum of Law in Support of Defendants' Motion to Dismiss (Failure to State a Claim Upon Which Relief Can Be Granted).

Dated: February 11, 2008.

Respectfully submitted,

/s/ Lisa Albert

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*Attorneys for Defendants Steven F. Herbert  
and James P. Gross*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, this day, a true and correct copy of the foregoing NOTICE OF DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, FOR IMPROPER VENUE, AND FOR FAILURE TO STATE A CLAIM was served by filing in the Court's CM/ECF system, which will automatically send email notification of such filing to the following counsel of record:

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DATED: February 11, 2008.

/s Lisa Albert  
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